



7020-02

## INTERNATIONAL TRADE COMMISSION

### Certain Silicon Microphone Packages and Products Containing Same

Investigation No. 337-TA-888

#### Commission Determination to Review in Part a Final Initial Determination; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) finding a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. §1337) (“section 337”), in the above-referenced investigation on August 29, 2014.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are

advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on July 26, 2013, based on a complaint filed by Knowles Electronics, LLC, of Itasca, Illinois. 78 *Fed.Reg.* 45272 (July 26, 2013). The notice of investigation named GoerTek, Inc. of Weifang, China and GoerTek Electronics, Inc. of Sunnyvale, California as respondents. The Commission's Office of Unfair Import Investigations is not a party to this investigation. The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of silicon microphone packages and products containing the same, by reason of infringement of certain claims of U.S. Patent Nos. 7,439,616 ("the '616 patent"); 8,018,049 ("the '049 patent"); and 8,121,331 ("the '331 patent"). Subsequently, the investigation was terminated as to claims 13 and 14 of the '616 patent and claim 24 of the '049 patent based on the withdrawal of complainant's allegations as to those claims. *See* Notice (May 16, 2014) (determining not to review Order No. 37 issued on April 17, 2014).

The final ID on violation was issued on August 29, 2014. The ALJ issued his recommended determination ("RD") on remedy, the public interest and bonding on the same day. The ALJ found that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain silicon microphone packages and products containing same, by reason of infringement of one or more of claims 1, 2, 8, 11-12, 15-18, and 21 of the '616 patent; claims 1, 15, 16, 19, 21-23, and 25-26 of the '049 patent; and claims 1, 2, 4, 5, and 11-13 of the '331 patent. The ALJ recommended that the Commission issue a limited exclusion order directed to respondents'

accused products that infringe the '616, '049, and '331 patents. The ALJ did not recommend issuance of a cease and desist order against respondents.

On October 2, 2014, complainant filed a post-RD statement on the public interest pursuant to Commission Rule 201.50(a)(4). No responses from the public were received in response to the post-RD Commission Notice issued on September 3, 2014. *See* Notice of Request for Statements on the Public Interest (Sep. 3, 2014).

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. In particular, the Commission has determined to review the construction of the "cover" limitation with respect to the '616 and '049 patent as well as related anticipation, obviousness, infringement and technical prong analyses. In addition, the Commission has determined to review infringement with respect to claim 8 of the '616 patent.

The parties are requested to brief their positions on only the following issues, with reference to the applicable law and the evidentiary record:

(1) Please discuss whether the record supports or precludes the ALJ's interpretation of the claim limitations "the at least one layer of conductive material in the cover" and "conductive layer formed in the cover" in the '049 and '616 patents, respectively. As part of this discussion, please address:

(a) whether the references to "a shield to protect . . . against electromagnetic interference" in claim 1 of the '049 patent and "a shield against electromagnetic interference" in claims 11 and 15 of the '616 patent provide context for interpreting the above-mentioned claim limitations; and

(b) whether multiple layers in the cover are relevant in order to provide “a shield to protect” or “a shield against” electromagnetic interference.

(2) With respect to the ‘049 and ‘661 patents, please discuss, in light of your response to the Commission's question pertaining to construction of claim limitations “the at least one layer of conductive material in the cover” and “conductive layer formed in the cover” in the ‘049 and ‘616 patents, respectively, whether the record supports the ALJ’s findings regarding these limitations with respect to infringement, technical prong, and non-obviousness, including the evidence of secondary considerations of non-obviousness.

(3) Assuming the asserted claims of the ‘049 patent require the presence of one or more additional layers in the cover besides “at least one layer of conductive material,” how does the presence of that additional material impact the respondents’ allegation that the asserted claims are obvious in light of *Halteren and Une* under *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007)? Please provide support and citations to the evidentiary record.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United

States, and/or (2) issue one or more cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337- TA-360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury.

**WRITTEN SUBMISSIONS:** The parties to the investigation are requested to file written

submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest and bonding. Such submissions should address the recommended determination on remedy, the public interest and bonding issued on August 29, 2014, by the ALJ. Complainant is also requested to submit proposed remedial orders for the Commission's consideration and to provide identification information for all importers of the subject articles. Complainant is further requested to provide the expiration dates of the '616, '049, and '331 patents and state the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on November 20, 2014. Reply submissions must be filed no later than the close of business on December 1, 2014. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Party submissions should not exceed 50 pages for the main submissions and 25 pages for the reply submissions.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-888") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures,* [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf)).

Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must

request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Issued: November 06, 2014

Lisa R. Barton

Secretary for the Commission